IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 684 of 2000

Date of decision: 13.09.2006

Harish Kumar

..... Petitioner.

Versus

Chander Sain

..... Respondent

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Amit Rawal, Advocate
for the petitioner.

P.S. PATWALIA, J. (ORAL)

The present revision petition is directed against the order dated 25.08.1999, vide which the Rent Controller, Ludhiana dismissed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (herein after referred to as 'The Act'), in default under Order 9 Rule 8 of the Code of Civil Procedure

Learned counsel for the petitioner-tenant has argued that once the tenant had appeared and as a precautionary measure and under protest had tendered rent on the demand of the landlord and an issue regarding rate of rent was framed, the petition could not have been dismissed for non prosecution. Learned counsel for the petitioner has also submitted that a reading of the order dated 25.08.1999 would show that it has been stated therein that no issue was framed with regard to rate of rent. He submits that in the suit, the following issues were framed:-

"1- Whether the petitioner is entitled to relief under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 ?OPA

2- Whether tender is short and invalid ?OPA

3- Relief."

It is his contention that a reading of issue No.2 would show that there was an issue with regard to the rate of rent. To support his contention, he placed reliance upon **Ram Nath Bhola v. Krishan Lal** 1995(1) RCR 300.

After hearing learned counsel for the petitioner and going through the record, I do not find any merit in the contention raised therein.

I would take up the second contention raised first. On the record attached Annexure P-1 is an application filed by the petitioner-tenant for deciding issue with regard to rate of rent and amount of rent due to the landlord. A reading of paras Nos. 2 and 3 of the application would show that the rate of rent in fact was not in dispute. It is only a period for which the rent was tendered, which was in dispute. Therefore, I find that there is no error when the Rent Controller has recorded that in the present case, no issue was framed as regard to the determination of the rate of rent.

So far as the first contention of the counsel, is concerned, learned counsel for the petitioner has placed reliance upon Ram Nath Bhola's case (supra), wherein the following observations were made:

"The contention of the learned counsel for the petitioner is that once the landlord was proceeded ex parte by order dated October 11, 1986, the only course open to the Rent Controller was to dismiss the ejectment petition in default and not to proceed with it any further what to talk of determining the rate of rent. The only course according to the learned counsel open to the tenant was to file a suit for the recovery of the amount paid in excess of the rent due, if any. This course was undoubtedly available to the tenant in the event of the ejectment petition being dismissed in default. However, I am of the opinion that the learned Rent Controller was within his jurisdiction to continue the proceedings and determine the rate of rent once an issue had been framed about the rate of rent even if the landlord had absented and had been proceeded ex-parte. It has been held in Sham Lal v. Shri Parkash Chand and another, 1985(2) PLR 585, that a tenant can under protest make payment or tender the arrears of rent at the rate as claimed by the landlord in the ejectment petition and if the rate is found subsequently to be less, he can hope for adjustment of the excess payment. It was further held that this was only possible if rate of rent was determined by the learned Rent Controller on the evidence led by the parties. Otherwise also, if arrears of rent were tendered on the first date of hearing as claimed by the landlord but at the same time rate of rent was disputed by the

> tenant, then it becomes the duty of the Rent Controller to give a specific finding as to the rate of rent after allowing the parties to lead their evidence. This is precisely what has happened in this case. The tenant tendered rent at the rate claimed by the landlord and at the same time disputed the rate of rent by filing written statement."

A perusal of the aforementioned judgment would show that in that case after the landlord filed a petition under Section 13 of the Act alleging that rate of rent was Rs.75/- per month the tenant had filed a reply disputing the rate of rent and pleaded that rate of rent was Rs.35/- per month. Issues were framed in the petition and one of the issues was as to what was the rate of rent. The landlord appeared in the proceedings for some time and, thereafter ex-parte proceedings were ordered against him. Thereafter, the learned Rent Controller determined the rate of rent Rs.35/- and not Rs.75/- per month. The landlord filed an appeal, which was rejected and thereafter filed the revision, by mentioning the aforementioned facts. A reading of the observations made by the Court and reproduce herein above would show that in such a situation the Rent Controller could have dismissed the ejectment petition in default. In that situation, the tenant was free to file a suit for the recovery of the amount of rent paid in excess, if any. However, this Court was of the view that the Rent Controller was equally within its jurisdiction to continue the proceedings and determine the rate of rent.

In the present case, the Rent Controller has dismissed the petition for non prosecution. Even as per the judgment relied upon by the learned counsel, this was one of the options before the Rent Controller. I, therefore, find no error in the order of the Rent Controller. However, it is clarified that the petitioner-tenant would be free to file a suit for recovery of the amounts paid in excess of the rent due, if any.

For the reasons aforementioned, present revision petition is dismissed. However, the tenant- petitioner in this petition, would be at liberty to file a suit for recovery of the amount paid in excess of the rent due, if any.

September 13, 2006 (P.S. PATWALIA)
dinesh JUDGE